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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,759	09/15/2003	Uwe Bacher	02581-P0544A	1909
24126 7590 12/12/2007 ST. ONGE STEWARD JOHNSTON & REENS, LLC 986 BEDFORD STREET STAMFORD, CT 06905-5619			EXAMINER LANG, AMY T	
			ART UNIT 3731	PAPER NUMBER
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/662,759  
Filing Date: September 15, 2003  
Appellant(s): BACHER, UWE

MAILED

DEC 12 2007

Group 3700

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Wesley W. Whitmyer, Jr.  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 10/23/2006 appealing from the Office action mailed 8/23/2006.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,366,477	LeMarie III	11-1994
2,334,449	Strait	3-1943

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over LeMarie, III et al. 5366477 in view of Strait 2334449. LeMarie discloses a medical instrument with a shaft 18, a handle 14 mounted on the proximal end of the shaft 18, and a tool (50,52) mounted on the distal end of the shaft 18 and activated by the handle 14, wherein the handle 14 and the tool (50,52) are in active connection by means of at least activation rod (20) and the tool (50,52) can be secured detachably by means of a tool shaft on the activation rod (20), for which purposes the tool shaft (242) and the activation rod (248) have protuberances (246) which can be joined in a form-locking

connection with corresponding recesses (244), wherein the recesses (244) and protuberances (246) corresponding to one another are configured in a such a way that the tool (50,52) and the activation rod (20) can be brought into engagement with one another by means of a movement exclusively in one direction essentially perpendicular to the longitudinal axis of the activation rod (20). Note figures 1-3, 11a, 1b and 12. LeMarie discloses the invention substantially as claimed except the claimed coupling between the activation rod and the tool. However, Strait discloses such coupling between male member 10 and female member 11. It would have been obvious to one having an ordinary skill at the time of the invention was made to modify LeMarie by using the coupling as taught by Strait to provide and easy and quick connection and disconnection between the two members of the coupling.

Regarding claim 1, LeMarie teaches the tool (50,52) secured to the activation rod (20) in such a way that forces can be transmitted in the longitudinal direction of the activation rod (20) and/or torsion forces can be transmitted to the tool (50,52).

Regarding claim 3, LeMarie teaches the tool (50,52) and the activation rod (20) connected with one another by means of a motion essentially perpendicular to the longitudinal axis of the activation rod (20).

Regarding claim 4, LeMarie teaches the activation rod (20,204,274,304) and the tool shaft (242) configured as essentially round in cross section.

Regarding claims 5-7, LeMarie teaches the recited connection means of the claim stud (212,214) and the hole 216. Note figure 11a-11b.

Regarding claims 8-9, LeMarie teaches the recited spring 332.

**(10) Response to Argument**

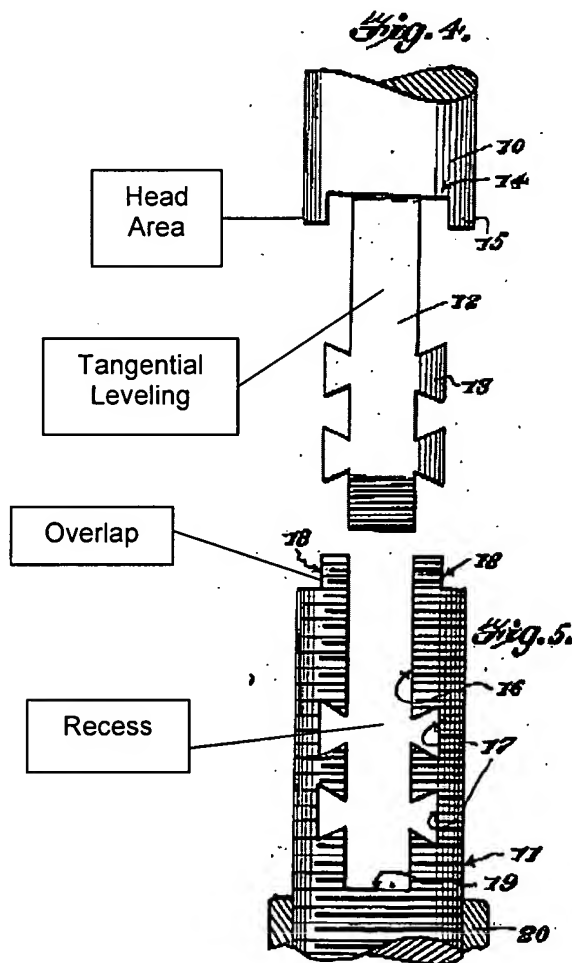
Specifically, appellant argues (A) that male member 10 and female member 11 of Strait can be brought into engagement by means of movement in two directions perpendicular to the longitudinal axes of the members. The direction wherein 10 is brought downward into engagement with 11 and the second wherein 10 is brought upward into engagement with 11.

With respect to argument (A), a direction is the line or course on which something is moving (Merriam-Webster dictionary). Therefore, whether member 10 is moving downward or upward, it is still moving along the same line. The member is therefore, still moving in only one direction since the line/course has not changed. Alternatively, the activation rod 6 and tool shaft 7 of the instant application are engaged when member 6 moves downward to engage member 7. Therefore the two members are brought into engagement in one direction perpendicular to the longitudinal axis of the activation rod 6. However, when flipped upside down, the activation rod 6 and tool shaft 7 are engaged when member 6 moves upward to engage member 7. This then qualifies as a second direction according to the appellant's argument. Therefore, based on the appellant's argument, the instantly claimed activation rod 6 and tool shaft 7 are not brought into engagement with one another by means of a movement in exclusively one direction.

Specifically, appellant argues (B) that LeMarie in view of Strait do not disclose a device having an activation rod with a tangential leveling and an overhanging head area

at the distal area and a tool shaft with an overlap for receiving the head area and a recess corresponding to the tangential leveling at the proximal area of the tool shaft.

With respect to argument (B), the instant application does not clarify what is meant by tangential leveling and no reference is provided in the drawings to demonstrate where the leveling is and how it is tangential to the activation rod. Furthermore, as shown below and in Figures 4 and 5 of Strait, a tangential leveling is disclosed so that a head area is formed. Member 11 comprises a recess corresponding to the tangential leveling and an overlap for receiving the head area.



Specifically, appellant argues (C) that the use of spring in the combination of LeMarie and Strait would not be practicable or possible.

With respect to argument (C), as shown in Figures 14A and 14B of LeMarie, a spring is disclosed between the activation rod and tool shaft. LeMarie teaches that the spring minimizes vibrations and improves the feel of the instrument during actuation (column 10, lines 42-45). Therefore, a spring placed between members 12 and 11 of Strait would also minimize vibrations induced along the shaft of the device and improve the feel of the device. The use of spring in the combination of LeMarie and Strait is practical and possible.

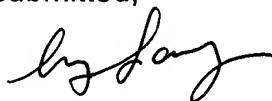
**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,

Amy T. Lang




Conferees:

Todd Manahan, Tom Barrett



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